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Hearing Date: March 21, 2024
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ELETSON HOLDINGS INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-10322 (JPM)

(Jointly Administered)

**OBJECTION OF THE UNITED STATES TRUSTEE
TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A)
AUTHORIZING THE DEBTORS TO OBTAIN POST PETITION FINANCING (B)
GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS (C) MODIFYING THE AUTOMATIC STAY,
(D) SCHEDULING A FINAL HEARING AND (E) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors' corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors' mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.

William K. Harrington, United States Trustee for Region 2 (the “United States Trustee”), through his counsel, respectfully submits this objection (the “Objection”) to the *Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Granting Liens and Providing Superpriority Administrative Expense Status (C) Modifying the Automatic Stay, (D) Scheduling a Final Hearing and (E) Granting Related Relief* [ECF No. 458] (the “Motion”).² In support thereof, the United States Trustee respectfully states:

PRELIMINARY STATEMENT

The United States Trustee files this objection to the Motion because the Bankruptcy Code prohibits the Debtors from incurring secured debt where unsecured financing is available. Section 364(c) provides that a debtor can incur debt secured by a lien on property if the debtor is unable to obtain unsecured credit. The PC Proposal (as defined below) was given to the Debtors subsequent to the date the Motion was filed. Now that it appears that the Debtors have an unsecured-financing alternative to the secured financing that was proposed in the Motion, the Debtors need to address why such secured financing is still necessary. Accordingly, if the Debtors are unable to address such issue, the Motion should be denied.

BACKGROUND

1. On March 7, 2023, Pach Shemen LLC; VR Global Partners, L.P.; and Alpine Partners (BVI), L.P. (collectively, the “Petitioning Creditors”) filed involuntary petitions under section 303 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”)³ against each of the Debtors.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

³ Unless otherwise stated herein, all section references are to the Bankruptcy Code.

2. On September 25, 2023, the Court entered an Order converting the case to a voluntary chapter 11 case. ECF No. 215.

3. On October 20, 2023, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) pursuant to section 1102(a) of the Bankruptcy Code. See ECF No. 233.

4. On March 7, 2024, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Granting Liens and Providing Superpriority Administrative Expense Status (C) Modifying the Automatic Stay, (D) Scheduling a Final Hearing and (E) Granting Related Relief* [ECF No. 458].

5. On March 11, 2024, the Petitioning Creditors filed the *Petitioning Creditors' Emergency Motion to Appoint a Trustee* [ECF No. 468] (the “Trustee Motion”).

ARGUMENT

The Debtors seek to incur debt that, among other things, will provide the proposed DIP lenders with “first-priority perfected security interests in and liens on all of the assets of the Debtors.” See Motion at ¶ 20. Thus, the debt will be incurred pursuant to section 364(c). Section 364(c) states:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c) (emphasis added). The initial clause of section 364(c) requires a debtor to

obtain available unsecured credit prior to obtaining superpriority or secured credit. *Id.*; *see also In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990) (“A court, however, may not approve any credit transaction under subsection (c) unless the debtor demonstrates that it has reasonably attempted, but failed, to obtain unsecured credit under sections 364(a) or (b).”).

After the Debtors filed the Motion, the Petitioning Creditors filed their Trustee Motion. The Trustee Motion included the Petitioning Creditors’ debtor-in-possession financing proposal (the “PC Proposal”) as an exhibit. *See* Trustee Motion, Exh. B. The PC Proposal is an offer to provide the Debtors with an unsecured debtor-in-possession facility. *Id.* In other words, the Debtors are able to obtain unsecured credit. The Debtors must address why they are still pursuing secured credit if they can obtain unsecured credit. If the Debtors are not able to do so to the satisfaction of the Court, the Motion should be denied.

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CONCLUSION

For the reasons set forth in this Objection, the United States Trustee respectfully requests that the Court deny the Motion and grant other relief as is just and proper.

Dated: New York, New York
March 14, 2024

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UNITED STATES TRUSTEE

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